

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amdt Dated September 30, 2005
Reply to Office Action of July 11, 2005

6

REMARKS

Claims 1-14 were previously pending in the present application. Claims 15-20 are currently withdrawn from consideration. Claims 1, 14, and 15 have been amended by way of the present communication. New claims 21-25 have been added. Favorable reconsideration and allowance of the application are respectfully requested in light of the foregoing amendments and the remarks which follow.

Claim Amendments

Applicant has amended claim 1 to remove various limitations, thereby broadening the claim scope. These amendments are fully supported (see, e.g., claim 1 as pending prior to the instant amendments) and are not made for reasons related to patentability.

Applicant has amended claims 14-15 to correct minor typographical errors. These amendments are made for the purposes of form and clarity, and not for reasons related to patentability.

New claims 21-25 have been added that correspond generally to elements removed from claim 1. Claims 21-25 are thus fully supported (see, e.g., claim 1 as pending prior to the instant amendments).

Applicant does not believe that these claim amendments involve the introduction of new matter. Accordingly, formal entry of the amended claims into the record is respectfully requested.

Request for Reinstatement of Claim 15

Claims 15-20 were subject to Restriction Requirement in the Office Action dated December 1, 2001 because those claims were said to be directed to a method while claims 1-14 were said to be directed to the apparatus. At the time, Applicant elected claims 1-14 with traverse.

Applicant now notes that claim 15 (currently withdrawn) is an apparatus claim that depends from claim 1. Accordingly, Applicant asserts that it is properly grouped with claims 1-14 as currently pending. Formal reinstatement of claim 15 (as amended) is respectfully requested. Applicant further requests that claim 15 be formally allowed as depending from an allowable independent claim, as will now be discussed.

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amdt Dated September 30, 2005
Reply to Office Action of July 11, 2005

7

Rejections Under 35 USC § 103(a)

1. The Rejection

The Office Action maintains the rejection of Claims 1-14 under 35 USC § 103(a) as being unpatentable over Dobrin (US 5,628,737) in view of Tapp (US 5,169,712)¹.

The Dobrin patent discloses an absorbent article 20 (Figure 2) comprising a core region 74 and a chassis region 76 surrounding the core region.

The article 20 is said to also comprise a laminate 95 which extends into both the core region and the chassis region to form a core backsheet and a chassis backsheet. The laminate 95 is said to comprise a polymeric film layer 26 (col. 6, lines 42-43) and a fibrous layer 90 (col. 9, lines 51-52). The laminate 95 is said to also comprise apertures 84 in the chassis region 76. The Office Action asserts that the apertures 84 give the chassis region 76 a higher degree of breathability than the core region 74 and, as a result, the MVTR in the core region 74 is asserted to be lower than the MVTR in the chassis region 76.

The Office Action admits that the Dobrin patent fails to disclose the use of a particulate filler material embedded in a polymeric film layer and asserts that the patent discloses all other aspects of the invention.

The Office Action therefore cites Tapp as disclosing a breathable laminate comprising a polymeric film layer and a fibrous layer (col. 4, lines 39-42, 60 and 61). The polymeric film layer is said to: 1) have a basis weight greater than 25 gsm (col. 16, lines 29-32), 2) comprise a polymeric matrix and a particulate filler material (col. 6, lines 65-68) and 3) enhance breathability by the formation of cracks around the particulate filler material (col. 13, lines 15-18). The Office Action concludes that it would have been obvious to construct the laminate of Dobrin using the polymeric film layer of Tapp to increase breathability of the laminate.

Applicant argued in the April 26, 2005 Response that Tapp fails to disclose the cracks around the filler material as being formed by passing the laminate between a roll pair where the roll pair comprises engaging ridges and grooves. In response, the current Office Action states that Claim 1 is drawn to an article of manufacture and that the determination of patentability is based on the article itself regardless of the method of manufacture.

¹ Tapp is cited in the Office Action as US Patent 5,628,737. However, US Patent 5,628,737 corresponds to Dobrin, the primary reference cited in the rejection. Applicant therefore responds herein to the rejection under the presumption that the Office Action intended to cite Tapp as US 5,169,712.

Appl. No. 09/446,550

8

Atty. Docket No. CM-1519Q

Amdt Dated September 30, 2005

Reply to Office Action of July 11, 2005

Accordingly, the Office Action concludes that if the structural features of the claimed invention are disclosed in the prior art, the prior art anticipates the instant claim.

The Office Action then cites Tapp as disclosing all the claimed structural features of the film (i.e., a film comprising a particulate filler material, the formation of cracks around the filler material, and a multiplicity of corrugations).

2. Applicant's Argument

Applicant recognizes that the Office Action appears to be advancing a rejection based on the treatment of product-by-process claims. In response, Applicant respectfully directs the Examiner's attention to MPEP §2113 which governs "product-by-process" claims. Specifically, "The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where ... the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product."

See also *In re Garnero*, 412 F.2d 276, 162 USPQ 221 (CCPA 1979), which held that the claim term "interbonded by interfusion" limits structure of the claimed composite. *In re Garnero* further noted that terms such as "welded," "intermixed," "ground in place," "press fitted," and "etched" are capable of construction as structural limitations.

Applicant therefore asserts that the Examiner is required to consider the structure implied by the presently claimed limitation of "said breathability is provided by cracks formed around said particulate filler material, wherein at least a portion of said cracks are formed by passing said laminate through at least one roll pair, said roll pair comprising engaging ridges and grooves which apply a multiplicity of corrugations to at least a portion of said laminate."

As noted in the April 26, 2005 Response, the combination of cited references fails to teach or suggest a structure where the breathability is provided by cracks formed around particulate filler material, where at least a portion of the cracks are formed using an activation process where the laminate is passed through at least one roll pair, where the roll pair comprises engaging ridges and grooves which provides a multiplicity of corrugations to at least a portion of said laminate as described in Claim 1 as amended because passage through a roll pair results in a structurally different pattern of cracks than would be obtained using the longitudinal stretching (i.e. a speed difference between roll pairs) or tentering as taught in the Tapp reference.

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amdt Dated September 30, 2005
Reply to Office Action of July 11, 2005

9

The Applicants submit that Tapp's stretching regimen would result in a substantially overall isotropic pattern of cracks because the amount of stretching is essentially the same in any given part of the web as it is being stretched using either of the longitudinal or tentering means that are taught by Tapp.

Conversely, the Applicants submit that a laminate according to the present invention would have a striated pattern of greater and lesser crack density due to the ridges and grooves of the roll pair. As support, the Applicants direct the Examiner to page 12, lines 1-12 of the present application and to Fig. 3 thereof. As can be seen therein, a portion of web 201 is essentially isolated so there is little, if any, web movement in a lateral direction at corners 238 as it passes through rolls 211 and 212 (The Applicants also direct the Examiner to page 13, lines 1-5 which discusses treating the roll surface in order to prevent web slippage). Given that the web is isolated adjacent the corners 238 and that the web is stretched as it moves through the roll pair, the Applicants submit that such a process will result in a striated pattern of higher and lower density of crack formation.

Accordingly, the presently claimed process produces a structure that is distinct from any structure taught or suggested in the prior art. Specifically, the prior art fails to teach cracks formed in a laminate using the rollers that apply a multiplicity of corrugations to at least a portion of the laminate, and the structure that results. Because the claimed method of producing the cracks would be expected to impart structural characteristics to the final product structure that are distinctive over the cited prior art (as discussed above), claim 1 is allowable over the prior art.

Accordingly, Applicant asserts that claim 1 is patentable over the cited prior art. Applicant further asserts that dependent claims 2-14 are allowable over the cited prior art for depending from an allowable claim. Withdrawal of the rejection under 35 USC § 103 over Dobrin in view of Tapp is therefore respectfully requested.

CONCLUSION

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention. In light of the discussions contained herein, the Applicants respectfully request reconsideration of the rejections, their withdrawal, and allowance of all of the claims. Issuance of a Notice of Allowance at an early date is earnestly solicited.

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Amdt Dated September 30, 2005
Reply to Office Action of July 11, 2005

10

No fees are believed to be due for the filing of this Response. If, however, any fees are deemed due as the result of this or any other communication, Applicant hereby authorizes the Commissioner to deduct said fees for this or any other communication from Deposit Account No. 16-2480.

Respectfully submitted,
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